

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FREE NOW FOUNDATION, et al.,

Plaintiffs,

v.

TOMAS ARAGON, et al.,

Defendants.

No. 2:24-cv-03523-DJC-SCR

ORDER

Plaintiffs have filed a Motion for Temporary Restraining Order and Preliminary Injunction requesting that this Court enjoin Defendant Courtney Johnson from excluding Plaintiff Minor Child #1 from attending classes at Foothill Technology High School. For the reasons stated below, Plaintiffs' Motion for Temporary Restraining Order is Denied. The Court also orders the Plaintiffs to file a renewed motion for preliminary injunction or show cause why Plaintiffs' Motion for Preliminary Injunction should not be denied on the same basis.

I. Legal Standard for Temporary Restraining Order

A temporary restraining order may be issued upon a showing "that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). In determining whether to issue a temporary restraining order, courts apply the factors that guide the

1 evaluation of a request for preliminary injunctive relief: (1) likelihood of success on the
2 merits; (2) irreparable harm in the absence of preliminary relief (3) the balance of
3 equities and (4) the public interest. See *Winter v. Natural Res. Def. Council, Inc.*, 555
4 U.S. 7, 20 (2008); see *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
5 839 n.7 (9th Cir. 2001) (explaining that the analysis for temporary restraining orders
6 and preliminary injunctions is “substantially identical”).

7 **II. Analysis**

8 Plaintiffs’ Motion for Temporary Restraining Order must be denied as it does
9 not address whether Plaintiff Minor Child #1 faces irreparable harm in the absence of
10 a temporary restraining order and thus the Motion fails to establish this necessary
11 element under the *Winter* analysis. (See Mot. (ECF No. 18-1).) Plaintiffs’ Motion first
12 addresses whether there are “serious questions going to the merits”. (*Id.* at 12–19.)
13 Plaintiffs then briefly address the “balance of the hardships” which Plaintiffs believe
14 tips in their favor. (*Id.* at 19.) Finally, Plaintiffs then turn to their final section entitled
15 “The Other Two *Winters* [sic] Factors Are Satisfied[.]” (*Id.*) In this section, Plaintiffs
16 state the final two factors are satisfied because “the balance of equities” tips in Plaintiff
17 Minor Child #1’s favor and because a temporary restraining order would be in the
18 public interest. (*Id.*) In sum, Plaintiffs’ motion addresses four factors: (1) serious
19 questions going to the merits, (2) the balance of hardships, (3) the balance of equities,
20 and (4) the public interest.

21 Plaintiffs’ Counsel appears to have misunderstood the sliding scale approach
22 and, as a result, failed to fully address the *Winter* factors. The sliding scale approach
23 sometimes utilized in the Ninth Circuit permits a lesser showing of one of the *Winter*
24 factors if there is a weaker showing of another. *All. For the Wild Rockies v. Cottrell*,
25 632 F.3d 1127, 1131 (9th Cir. 2011). Most commonly, this is used to reduce the
26 “likelihood of success on the merits” factor to whether there are “serious questions
27 going to the merits” where the balance of hardships tips in favor of the plaintiff. See
28 *id.* at 1131–32.

1 Even if the sliding scale approach applies, the Court is skeptical that there are
2 serious questions going to the merits. See e.g., *Whitlow v. California*, 203 F. Supp. 3d
3 1079 (S.D. Cal. 2006). However, the Court need not reach this issue here as Plaintiffs
4 have not addressed the irreparable harm factor. The sliding scale approach does not,
5 as Plaintiffs seem to believe, remove the “irreparable harm” requirement of *Winter* and
6 replace it with a “balance of the equities” test that is duplicative of the “balance of the
7 hardship” test.

8 Plaintiffs’ failure to establish that Plaintiff Minor Child #1 will suffer irreparable
9 harm is fatal to their Motion. Plaintiffs are required to “make a showing on all four
10 prongs” of the *Winter* test to obtain preliminary injunctive relief. *All. For the Wild*
11 *Rockies*, 632 F.3d at 1131; see *Koller v. Brown*, 224 F. Supp. 3d 871, 879 (N.D. Cal.
12 2016) (“An adequate showing of irreparable harm is the single most important
13 prerequisite for the issuance of a [temporary restraining order].” (internal citations and
14 quotation marks removed).) The complete failure to address one of these prongs
15 mandates the denial of Plaintiffs’ Motion.

16 **III. Conclusion**

17 For the reasons stated above, IT IS HEREBY ORDERED that Plaintiffs’ Motion for
18 Temporary Restraining Order (ECF No. 18) is DENIED. Additionally, within fourteen
19 days of this order, Plaintiffs may file a renewed Motion for Preliminary Injunction.
20 Otherwise, Plaintiffs are ORDERED TO SHOW CAUSE why Plaintiffs’ Motion for
21 Preliminary Injunction (ECF No. 18) should not also be denied on this same basis.

22
23 IT IS SO ORDERED.

24 Dated: **March 26, 2025**


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE